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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BHASKARPILLAI GOPINATH

Appeal 2009-000472
Application 10/619,245
Technology Center 2400

Decided: October 29, 2009

Before JOSEPH L. DIXON, THU A. DANG, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL
I. STATEMENT OF CASE

Appellant appeals the Examiner's final rejection of claims 1-20 under 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b)(2002).

We AFFIRM.

A. INVENTION

According to Appellant, the invention relates to computer network-implemented services and, more particularly, to the dynamic configuration of a set for the services into an application accessible to a group of interested participants (Spec. 1, ll. 9-11).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A method for servicing a dynamically formed group of participants for a temporary social occasion comprising

provisioning a set of computer network implemented services available from a service provider,

configuring an application to execute on a server accessible to the participants via the service provider, the application being user-created by one of the participants choosing selected ones of the services corresponding to the occasion,

executing the application to interconnect and coordinate the interactions of the participants for the occasion, and

capturing all of the interactions of the participants throughout the duration of the occasion in a thread-of-activity file stored on the server for later recall by at least one of the participants.

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C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Conklin US 6,141,653 Oct. 31, 2000

Claims 1-20 stand rejected under 35 U.S.C. § 102(e) as anticipated by the teachings of Conklin.

II. ISSUE

The issue is whether Appellant has shown that the Examiner erred in determining that Conklin discloses “configuring an application to execute on a server accessible to the participants via the service provider” (claim 1).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Conklin

1. Conklin discloses enabling a sponsor to create and administer a community between participants such as buyers and sellers (Abstract).
2. A seller/participant uses remote authoring templates to create a complete Website for immediate integration and activation in the community, to evaluate proposed buyer orders and counteroffers, and

to negotiate multiple variables such as prices, terms, conditions, etc. (*Id.*).

IV. PRINCIPLES OF LAW

35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) “In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.” *Id.* (citations omitted).

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Of course, anticipation "is not an 'ipsissimis verbis' test." *In re Bond*, 910 F.2d 831, 832-33 (Fed. Cir. 1990) (citing *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 n.11 (Fed. Cir. 1986)). "An anticipatory reference . . . need not duplicate word for word what is in the claims." *Standard Havens Prods., Inc., v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

V. ANALYSIS

Claims 1-9

Appellant argues that "Conklin is fundamentally different from what the Appellant has disclosed and claimed" (App. Br. 8) because "Conklin deals with a methodology induced by a three-tiered hierarchy of three interconnected entities, namely, a service provider, a sponsor, and a plurality of participants, in an arrangement for interactive, multivariate negotiations over a network" (App. Br. 10). Thus, Appellant contends that "it is not possible to conjecture a two-level structure [of Appellant's invention] in Conklin because three functionalities, each of necessity implemented in a separate level, are required due to the nature of the problem addressed by Conklin" (App. Br. 13). Appellant then contends that "Appellant is explicit in the recitation of the Claim 1 (as well as the other independent claims) that there are only two entities, namely, the service provider and the participants, and any interactions take place between these two entities" (App. Br. 15-16).

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However, the Examiner finds that “the features upon which applicant relies (i.e., a two-tiered hierarchy) are not recited in the rejected claim(s)” (Ans. 7). In particular, the Examiner finds that “[t]he two-tiered hierarchy is not explicitly or implicitly contained in the claim language” (*Id.*). Accordingly, the Examiner finds that “Conklin meets the claimed limitation (*Id.*).

Thus, the issue that we address on appeal is whether Conklin discloses “configuring an application to execute on a server accessible to the participants via the service provider” (claim 1).

Appellant’s argument that “Conklin is fundamentally different from what the Appellant has disclosed and claimed” (App. Br. 8) because “Conklin deals with a methodology induced by a three-tiered hierarchy” (App. Br. 10) is not commensurate in scope with the language of claim 1. That is, we agree with the Examiner that claim 1 does not recite any limitation in which the system is “a two-level structure” as Appellant contends.

We give the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns*, 988 F.2d at 1184.

Contrary to Appellant’s contention that in claim 1, “there are only two entities, namely, the service provider and the participants” (App. Br. 15-16, emphasis added), such “only” limitation is not recited in claim 1. Rather,

claim 1 merely recites “configuring an application to execute on a server accessible to the participants via the service provider.” That is, claim 1 recites a “service provider” and “participants,” but does *not preclude* a three-tiered hierarchy comprising a service provider and participants but *also* comprising a sponsor.

Claim 1 simply does not place any limitation on what the phrase “accessible to the participants via the service provider” means, includes or represents. Therefore, we will not confine the meaning of “via the service provider” to the “only two entities” definition provided in Appellant’s arguments (App. Br. 15-16, emphasis added). Rather, we construe the server “accessible to the participants via the service provider” to be any server that a user can access which relates, directly or indirectly, to the service provider.

Conklin discloses creating and administering a community between participants and service providers (FF 1), wherein a service provider uses remote authoring templates to create a complete Website for immediate integration and activation in the community, to evaluate proposed orders and counteroffers, and to negotiate multiple variables such as prices, terms, conditions, etc. (FF 2).

We find that an artisan would have understood Conklin’s server running the Website that enables participants to communicate with service providers, including proposing orders and counteroffers and negotiating variables, to be a server that is “accessible to the participants” as required by

claim 1. Further, the artisan would also have understood the Website’s creation via the service provider’s remote authoring templates to be “via the service provider” as required by claim 1. We thus agree with the Examiner that Conklin discloses “configuring an application to execute on a server accessible to the participants via the service provider” (claim 1). That is, contrary to Appellant’s contention, Conklin discloses a hierarchy that includes “participants” and “service provider” of claim 1.

Accordingly, we conclude that the Appellant has not shown that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 102(e). Since Appellant does not provide separate arguments for dependent claims 2, 3 and 5-9, dependent claims 2, 3 and 5-9 also fall with claim 1.

As for claim 4 depending from claim 1, Appellant “incorporates” the arguments with respect to claim 1 (App. Br. 17), and adds that “the purpose for deactivating the application for later self-activation is not one of minimizing the number of active application, but rather addresses the need to discontinue the celebration for a period of time” (*Id.*). However, such “purpose” or “need” being addressed is not recited in the language of claim 4.

The Examiner finds that the limitations of claim 4 is found, either expressly or inherently described, in Conklin (Ans. 5). Appellant provides no argument to dispute that the Examiner has correctly shown where the claimed elements of claim 4 appear in Conklin. Accordingly, we conclude

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that the Appellant has also not shown that the Examiner erred in rejecting dependent claim 4 under 35 U.S.C. § 102(e).

Claims 10-20

As to independent claims 10 and 19, Appellant does not provide separate arguments with respect to the rejection of claim 1. Thus, we conclude that Appellant also has not shown that the Examiner erred in rejecting independent claims 10 and 19, and claims 11-18 and 20, respectively depending therefrom and falling therewith, under 35 U.S.C. § 102(e).

VI. CONCLUSIONS

- (1) Appellant has shown that the Examiner erred in concluding that claims 1-20 are anticipated by the teachings of Conklin.
- (2) Claims 1-20 are not patentable over the prior art of record.

VII. DECISION

The Examiner's decision rejecting claims 1-20 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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peb

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